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November 25, 2019

VIA ECF

Honorable James B. Clark, III
United States Magistrate Judge
King Fed. Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: *Bath Iron Works Corporation v. Congoleum Corporation*
Civil Action No. 2:19-cv-12517-KM-JBC**

Dear Magistrate Judge Clark:

Bath Iron Works Corporation (“BIW”) and Congoleum Corporation (“Congoleum”), parties in the above-referenced matter, hereby stipulate as follows:

1. BIW previously submitted to the Court on August 28, 2019, (19-cv-12517, the “Transferred Action,” ECF 34), a letter explaining that:
 - a. BIW would bring a third-party action against Congoleum in *Occidental Chemical Corp. v. 21st Century Fox America, et al.*, No. 2:18-cv-11273-MCA-JAD (the “Occidental Action”). This would essentially have the effect of making redundant the new claims brought by Congoleum and BIW in 19-cv-12517 that relate to environmental claims relating to the larger Kearny Property (“Kearny Property” and “DVL Property” as used herein have same definition as used in 17-cv-04261, the “DVL Action,” ECF 124). The parties would work to dismiss the Transferred Action before Your Honor (19-cv-12517) in an efficient manner.
 - b. The parties will stipulate that their indemnification/successorship claims and defenses concerning both the DVL Property and the larger Kearny Property should be consolidated in the DVL Action. This should moot the pending Congoleum’s Motion to Consolidate cases 17-cv-04621 and 19-cv-12517, the DVL and Transferred Actions. (DVL Action, ECF 115).
2. On September 24, 2019, BIW filed its third-party action against Congoleum in the Occidental Action. (Occidental Action, ECF 836.)
3. BIW and Congoleum stipulate that each party will submit amended cross-claims against each other, which will incorporate the claims each party alleged against the other in the Transferred Action, regarding indemnification/successorship of both the

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- DVL Property and the Kearny Property, into its already filed claims in the DVL Action. The parties stipulate that each will file its respective cross-claims on December 11, 2019. The parties further stipulate that no new claims will be alleged; rather, each will incorporate its already pending claims from the Transferred Action into the DVL Action.
4. The parties stipulate that each party will file amended answers and affirmative defenses on December 23, 2019, responding to the amended claims filed on December 11, 2019. These answers and affirmative defenses will incorporate the answers and affirmative defenses each party asserted in the Transferred Action, regarding indemnification/successorship of the DVL Property and the Kearny Property, into the answers and affirmative defenses in the DVL Action. The parties stipulate that no new defenses will be alleged; rather, each will incorporate its already pending defenses from the Transferred Action into the DVL Action.
 5. Once this stipulation is so ordered, the parties will file a joint motion for leave to amend the pleadings in the DVL Action, which will include the above scheduling deadlines for these amended pleadings, with the Court.
 6. Once this stipulation is so ordered, and the parties file amended pleadings in the DVL Action, the parties will dismiss their claims, without prejudice, in the Transferred Action.
 - a. BIW further stipulates that, so long as its claims regarding indemnification/successorship against Congoleum are resolved in either the DVL Action or the Occidental Action, BIW will not revive the Transferred Action claims against Congoleum in any other forum without Congoleum's consent.
 7. After the parties file their amended pleadings, BIW stipulates that it will withdraw both of its motions for leave to amend its affirmative defenses pending in the DVL Action, as they will be moot. (Dkt. Nos. 104 and 114.)
 8. After the parties file their amended pleadings, Congoleum stipulates that it will withdraw its Motion to Consolidate pending in the DVL Action. (Dkt. No. 115.)
 9. The parties agree to request that the court in the Occidental Action extend the time for Congoleum to respond to BIW's third-party complaint from December 9, 2019 to January 9, 2020. Following the filing of Congoleum's pleading responding to BIW's third-party complaint in the Occidental Action, Congoleum and BIW will file a stipulation in the Occidental Action memorializing their agreement that (a) discovery and motion practice as between them in the Occidental Action should be stayed pending resolution of their claims in the DVL Action and (b) if their indemnification and successorship claims are not resolved in the DVL Action, they will not seek additional discovery on those issues in any other action. Congoleum and BIW will still be

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obligated to respond to discovery served by any other parties in the Occidental Action and they will also be free to serve discovery requests against any other parties.

Thank you for Your Honor's attention to this submission.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'E-Kanefsky', written over a horizontal line.

Eric T. Kanefsky, Esq.
Calcagni & Kanefsky, LLP

cc: All Counsel of Record (via ECF)